

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 586

SPONSOR: Committee on Judiciary and Senator Lynn

SUBJECT: Family Court Efficiency

DATE: March 3, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>AAV</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The CS revises various family law provisions as may affect children and families involved in cases within the judicial system. Specifically, the CS:

- Authorizes the courts and the clerks of court to collect and use portions of social security numbers until October 2, 2009, for the sole purpose of developing a unique identifier system to identify, link, and track related court cases;
- Clarifies the precedence of orders entered in chapter 39, F.S., over similar orders entered concurrently or subsequently in other types of civil proceedings;
- Provides that dependency orders and evidentiary matters entered in dependency proceedings may be admitted into evidence under limited circumstances in subsequent civil proceedings affecting child custody, visitation, support, adoption, parental rights, and responsibility;
- Clarifies the precedence of temporary orders governing custody, visitation, and support entered in domestic violence injunction proceedings over other similar orders entered in other types of civil proceedings;
- Deletes unconstitutional provisions reflective in recent court rulings relating to grandparent standing and visitation rights in custody and visitation proceedings; and
- Imposes a 45-day timeframe for parents to complete parent education courses in dissolution of marriage proceedings.

This CS substantially amends the following sections of the Florida Statutes: 39.013, 39.0132, 39.521, 39.814, 61.13, 61.1827, 61.21, 409.2579, and 741.30. The CS creates the following section of the Florida Statutes: 25.375.

II. Present Situation:

Under current law, legal matters involving children and families are frequently addressed piecemeal. This system is supported in part by the organizational framework of the court divisions and in part by laws resulting in fragmented judicial resolution of narrow legal issues. Many of the family law cases, however, involve the same children or families with prior, concurrent, or subsequent judicial involvement in other related family law cases including delinquency and dependency. Moreover, many of these cases involve complex family dynamics, and social, economic, and psychological factors that create or exacerbate the legal problems in the family law cases. When a court is unaware of other cases involving the same child or family, or is prohibited from considering otherwise admissible information in related court proceedings, comprehensive resolution within the existing structure of the various court divisions is impeded. Frequently duplicate orders are entered or the child or family will require future judicial intervention or may have to make multiple court appearances.

These family law cases place significant demands on the judicial system.¹ Over 12 years ago, the Legislature initiated its own family court reform to address the impact of these cases on the judicial system. A legislatively created Commission on Family Courts was directed to make recommendations including the implementation of a family division in each judicial circuit.² In subsequent years, one of the persistent guiding principles underlying the Commission's recommendations included the development of a judicial process that coordinated the court's equitable and comprehensive consideration of all matters affecting a child and family, regardless of the child's or family's point of entry into the judicial system. In 2001, the Senate directed a joint project to be conducted by the Committee on Children and Families and the Committee on Judiciary for a review of the family court divisions and the unified family court model.³ One of the primary recommendations evolving from the interim project focused on identifying specific statutory changes that would improve substantially the courts' current decision-making abilities in tailoring a cohesive resolution to legal matters arising in multiple concurrent or subsequent cases involving the same child or family.⁴

III. Effect of Proposed Changes:

This CS is based on recommendations for specific statutory changes that would assist the court in facilitating the management and resolution of multiple cases relating to the same child or

¹ Since 1990, the volume of family law cases has grown exponentially. According to the Office of State Courts Administrator, domestic relation court filings increased from 1986 to 2000, by almost 70 percent while juvenile delinquency and dependency court filings increased by almost 60 percent. By 2000, these cases accounted for 44.4 percent of all cases heard in circuit courts.

² See ch. 90-273, L.O.F.

³ The Committee on Children and Families took primary oversight in matters relating to other services and systems for children and families. See Senate Interim Project Report 2002-141, *Review of Family Courts Division and the Model Family Court: Court Services and System*. The Committee on Judiciary took primary oversight in matters relating to court services and system. See Senate Interim Project Report 2002-141, *Review of Family Courts Division and the Model Family Court: Court Services and System*.

⁴ Two other major interim projects evolved out of the recommendations: public records (accessibility, confidentiality, and privacy) and the representation of children. The public records matter became the subject of ch. 2002-302, L.O.F. (creation of Study Committee on Public Records). See the study committee's Final Report: *Examination of the Effects of Advanced Technologies on Privacy and Public Access to Court Records and Official Records*, Feb. 15, 2003. The representation of children was the subject of a separate interim project report, 2002-140, *Legal Needs of Children*, and SB 686 (2002).

family. When applicable, the rationale for the proposed changes are discussed within the context of the present situation.

JUDICIAL CASE MANAGEMENT AND INFORMATION SHARING

Present Situation:

Many of the existing information systems within the state are not coordinated or integrated to facilitate information sharing, exchange, or retrieval within and outside the court system. The difficulties in tracking and coordinating related cases are further compounded by the increased mobility of family households between circuits and the divergent and evolving nature of family household dynamics. Currently, no single or uniform system of judicial case management exists in the state. A number of stakeholders, including the courts, have begun to conduct assessments of their respective technology and to develop technological parity and uniformity among the courts in all counties and circuits. Integral to any judicial case management system is the ability to identify, coordinate, monitor, and link all related cases impacting one child or family, including referral and linkage to judicially recommended or needed social services available outside the court system. While enhanced technology can facilitate the efficiency of judicial case management and resolution of matters impacting a child and family, judicial case management systems rely on unique identifiers to identify and move those cases expeditiously within the judicial process to final resolution. In practice, the courts and the clerks of court have come to rely, as have other governmental entities, on the social security number or part thereof as an identifying number to an individual's record.

Effect of proposed changes:

Section 1 creates s. 25.375, F.S. This section authorizes the courts and the clerks of courts to collect and use personal identifying information such as social security numbers for the sole purpose of developing a system for case management and tracking.⁵ This authorization expires October 2, 2009. The Office of State Courts Administrator identified this amount of time as appropriate for developing a unique identifier code system. The unique identifier, once developed, may only use a portion rather than the entire social security number. The CS states that services, rights, and remedies otherwise provided by law may not be denied anyone if the person fails to provide the social security number.

JURISDICTIONAL CONFLICTS: PRECEDENCE OF ORDERS

Present Situation:

Since the point of entry for a child or family into the judicial system can occur in one or more proceedings including dependency, dissolution of marriage, delinquency, or paternity, one court may inadvertently enter an order that relates to the same issue of an order entered by another court in another division, resulting in conflicting or overlapping orders. The law has been unclear about the continuing precedence of certain orders entered in one proceeding over orders entered in another proceeding. For example, a dependency order takes statutory precedence over similar orders in pending or subsequent civil matters but if the court has terminated jurisdiction it is

⁵ Section 119.0721, F.S., states that all social security numbers acquired by an agency are confidential and exempt from statutory and constitutional public records requirements. Section 119.07(3)(ff), F.S., provides an exemption for a social security number that is included in a court file, unless redaction is requested. This exemption is only applicable until January 1, 2006.

unclear as to the precedence of that order in a subsequent divorce or paternity proceeding if a parent sought to modify custody or visitation. *See* s. 39.013, F.S., and s. 39.521, F.S. Current law would require the parent to re-open the dependency case even if the case no longer rose to the level of abuse or neglect sufficient to invoke the Department of Children and Families' involvement. Another example involves temporary orders in domestic violence proceedings over such orders in other civil proceedings. A court may enter a temporary order on matters of custody, visitation or support at an ex parte hearing for a domestic violence injunction on the presumption that permanent orders will be dealt with in pending or subsequent matters under chapter 61, F.S. *See* s. 741.30, F.S. Some concerns have arisen that the ex parte hearings could and have been used to establish temporary orders on the issues of custody and support which then become the pre-emptive basis for permanent orders of custody and support entered without the attendant evidentiary burden usually required in a dissolution of marriage or paternity proceeding. Nonetheless, the current law does not provide a timeframe for how long these temporary orders remain in effect. In order to assist the court in deciding matters consistently and comprehensively affecting a single child or family, the need arises to clarify the precedence and effect of orders in dependency proceedings and temporary orders in domestic violence injunction proceedings.

Effect of proposed changes:

Sections 2 and 4 amend s. 39.013 and s. 39.521, F.S., respectively, to clarify that orders entered under chapter 39, F.S., shall take precedence over other orders entered previously, concurrently, or subsequently relating to the placement of, access to, parental time with, or parental responsibility for the minor child in civil proceedings. However, if the court has terminated jurisdiction, then the order entered under chapter 39, F.S., can be subsequently modified in other civil proceedings.

Section 8 amends s. 741.30, F.S., to state a temporary order relating to custody, visitation, and support entered in domestic violence injunction proceedings remains in effect until the earlier of the following: 1) The order expires, or 2) A permanent order is entered by a court of competent jurisdiction in a pending or subsequent civil proceeding affecting the placement of, access to, parental time with, or parental responsibility or support for the minor child. Additionally, an erroneous statutory cross-reference is corrected.

ADMISSIBILITY OF DEPENDENCY ORDERS AND EVIDENCE

Present Situation:

The admissibility of evidence in civil and criminal proceedings, including workers' compensation proceedings, is generally governed by the Evidence Code set forth in chapter 90, F.S. However, the Evidence Code does not apply in the same way to allow for the admission of orders and evidentiary matters entered under chapter 39, F.S., in other civil or criminal proceedings⁶. *See* s. 39.0132 and s. 39.814, F.S. Over time, these provisions have impeded the court's access to relevant information and affected its decision-making abilities in handling matters involving a child or family in all related cases, often resulting in unnecessary re-litigation

⁶ A few exceptions are made. For example, a termination of parental rights order may be admissible in a subsequent adoption proceeding of the same child or sibling or records or portions of a dependency case may be admitted into perjury proceedings.

of the same facts or evidence in subsequent legal proceedings. The rationale underlying the request for change is that if the evidence was admissible in an evidentiary hearing under chapter 39, F.S., it should have the same presumptive standard of reliability and relevance in a subsequent civil proceeding. In conjunction with the issue on the precedence of dependency orders, clarification has also been sought on the issue regarding the subsequent admissibility of such orders and their findings of fact and other evidentiary matter in other civil proceedings involving the same child or a sibling of that child.

Effect of proposed changes:

Sections 3 and 5 amend s. 39.0132, F.S., and s. 39.814, F.S., respectively, to facilitate the admissibility of reliable and relevant evidence from a proceeding arising under chapter 39, F.S., to another civil proceeding affecting the same child or sibling of the child. The amendments bring these provisions back somewhat into sync with the Evidence Code which generally allows final orders and evidence entered in one type of proceeding to be admitted in another type of civil proceeding under specified circumstances. The amendments specifically permit a final order or evidence entered in one civil proceeding to be admitted into another civil proceeding if relating to the same child or sibling of that child, provided the case involves an issue of placement, access, parental time, adoption, or parental rights or responsibility of the child. Notice must be given to the opposing party of the intent to offer or introduce the evidence and the court would still have to determine whether the final order or evidence is relevant and reliable in accordance with the admissibility standards set forth in the Evidence Code. Furthermore, the confidentiality of such order or evidentiary matter is retained even when used in a subsequent civil proceeding. With the exception of perjury proceedings, this evidence remains inadmissible in criminal proceedings as is provided in current law.

OTHER STATUTORY UPDATES RELATING TO FAMILY MATTERS

Present Situation:

Current law recognizes a natural parent's rights as superior to that of any other relative or person over the custody or visitation of the child until or unless it can be demonstrated that the parent is unfit or there is harm to the child. A parent's fundamental right to raise his or her child free from governmental interference is protected under the Fourteenth Amendment of the *United States Constitution*, and under the explicit right of privacy provision in article 1, section 23 of the *Florida Constitution*. In 2000, the Florida Supreme Court declared a provision granting grandparent custodial rights in proceedings under chapter 61, F.S., unconstitutional.⁷ The Court in *Richardson v. Richardson* held that s. 61.13(7), F.S., which vested custody rights in grandparents was facially unconstitutional as it equates grandparents rights with the rights of natural parents and it permits courts to determine custody disputes using solely the "best interest of the child" standard without first determining detriment to the child. In January 2004, the Florida Supreme Court again ruled that another subsection of s. 61.13, F.S. (s. 61.13(2)(b)2.c., F.S.), contained the same constitutional infirmity because it allowed the court to award grandparents' visitation rights in pending cases under chapter 61, F.S., based solely on the child's best interests.⁸

⁷ See *Richardson v. Richardson*, 766 So.2d 1036 (Fla. 2000).

⁸ See *Sullivan v. Sapp*, 29 Fla. L. Weekly S15, --- So.2d --- (Fla. Jan. 15, 2004).

Effect of proposed changes:

Section 6 amends ss. 61.13(1), (2), and (7), F.S., relating to support, custody, and visitation. First, this section of the CS clarifies that the court has jurisdiction to determine under chapter 61, F.S., all matters relating to child support regardless of whether the proceeding is based on an underlying dissolution of marriage. Second, this section deletes the entirety of subsection (2)(b)2.c. of s. 61.13, F.S., relating to the granting of grandparent visitation rights as this provision was found to be unconstitutional. Similarly subsection (7) which was also declared unconstitutional as relates to the standing of grandparents to petition for grandparent rights was also deleted. While the law does not necessarily preclude grandparents from seeking visitation, the grandparents will have to demonstrate a showing of harm or parental unfitness in a pending dissolution of marriage or custody action in accordance with court rulings. Based on this threshold set out in case law, these types of cases would most likely trigger involvement by the Department of Children and Family Services under chapter 39, F.S.

LEGAL AND NON-LEGAL SERVICES FOR CHILDREN AND FAMILIES***Present Situation:***

A number of services are available (including guardian litem services, supervised visitation programs, parenting courses, and domestic violence assistance services) to assist the courts in resolving matters before them, to assist families in navigating the judicial process, and to promote the safety of children and families, particularly in volatile family scenarios. One such service is the parenting education course which is entitled “Parent Education and Family Stabilization.” The Department of Children and Family Services is required to approve a parenting course which must consist of a minimum of 4 hours designed to educate, train, and assist divorcing parents in regard to the consequences of divorce on parents and children.⁹ Parties who have children and who are separating or in a divorce, or who are part of a paternity action are required to complete the course before a final judgment is entered.

Effect of proposed changes:

Section 7 amends s. 61.21, F.S., to impose an earlier time period during which the parents must complete the parenting education course in dissolution of marriage and paternity actions. If the parent is the petitioner, the parent must complete the course within 45 days after the petition is filed. All other parties must complete the course within 45 days after the petition is served. Upon good cause, the court may waive attendance or the stipulated time frame for completing the course. Earlier completion of the course could facilitate the mediation process and enhance communications between the parents to ease the emotional tension and negative effect on the children and families.

Sections 9 and 10 amend s. 61.1827(1), and s. 409.2579(1), F.S., respectively, both of which relate to identifying information concerning applicants and recipients of child support services, to conform a cross-reference to a subsection of s. 61.13, F.S., which the CS amended.

Section 11 provides a severability clause that provides for the continued effect of other provisions of this act in the event a provision is declared unconstitutional.

⁹ See s. 61.21, F.S. The authority to approve these courses was shifted from the courts to the department in anticipation of Revision 7 to Article V which shifts major court costs from local government to the state.

Section 12 provides for an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This CS does not appear to implicate the public records law¹⁰ although it authorizes the court for a specified period of time to collect a portion of and use social security numbers to develop unique identifiers to create an efficient judicial case management system to link and track related cases. Like most governmental entities, the courts and the clerks of the court have come to rely on the social security number either in its entirety or partially to develop unique identifier systems for the purpose of facilitating comprehensive case management, processing, and resolution. In response to the concern of the availability and access to personal identifying information in these records, some of which constitute public records, the Legislature recently enacted public records exemptions as to social security numbers. *See* s. 119.0721, F.S. Since October 1, 2002, all social security numbers held by an agency or its agents, employees, or contractors are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the *Florida Constitution*. Also, since October 1, 2002, no person preparing or filing a document to be recorded in the official records by the county recorder as provided for in chapter 28 may include any person's social security number in that document, unless otherwise expressly required by law. If a social security number is or has been included in a document presented to the county recorder for recording in the official records of the county before, on, or after October 1, 2002, it may be made available as part of the official record available for public inspection and copying.

¹⁰ A constitutional right of access (inspect or copy) to public records exists under section 24 of article I of the *Florida Constitution*. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law. The corresponding general law is found in chapter 119, F.S. There must be an expressed statement of public necessity which justifies the exemption. The exemption can be no broader than necessary to accomplish the purpose of the law and must satisfy one of three other criterion relating to the sensitivity and confidentiality of the information. The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption provided under the Public Records Act. *See* s. 119.15, F.S. If the Legislature intends to re-enact the new exemption or the substantial amendment of an existing exemption, the Legislature must act to re-enact it in the fifth (and final year) of the exemption period, otherwise, it stands repealed on October 2, of that year.

The Department of Children and Families has suggested that a public records exemption provision may be necessary to protect the confidentiality of the potential for public disclosure of dependency records and HIPPA information under s. 39.0132 and s. 39.814, F.S.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The cumulative effect of many provisions in this CS may benefit children and families within the court system by promoting a judicial and collaborative process that comprehensively, judiciously, and effectively addresses a child's and family's legal and non-legal needs through full resolution of legal matters and through referral and linkage to services outside the court system.

C. Government Sector Impact:

This CS may enhance the operations of the state courts system as it pertains to family law matters. The CS may facilitate courts' decision-making abilities, streamline judicial process, improve information flow, maximize existing judicial resources, avoid the entry of conflicting orders, and reduce multiple court appearances by children and families.

The Department of Children and Family Services reports that there may be fiscal impact resulting from increased requests for departmental and community-based care provider records in civil proceedings as a result of the changes in s. 39.0132 and s. 39.814, F.S. Such costs may be offset by the decreased costs in litigation resulting from witnesses and legal counsel associated with the prohibition in admitting relevant and reliable evidence and orders from previous civil proceedings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Sections 39.0132 and 39.814, F.S., relate to the same issues governing oaths, records, confidential information, and public records exemption. The first provision (s. 39.0132, F.S.) is a general provision in part I of chapter 39, F.S., which by implication is supposed to be applicable to all proceedings and matters under all 13 parts of chapter 39, F.S.¹¹ The second provision

¹¹ When chapter 39, F.S., underwent a third of a series of annual revisions including statutory re-organization during the Legislature Session 2000, the word "part" was universally substituted with the word "chapter" in the general provisions statutes under Part I of chapter 39, F.S. This change was intended to clarify that the general provisions in part I of chapter 39, F.S., applied to all the parts of that chapter. See HB 2125; ch.2000-139 L.O.F. However, the law that passed was based on the house bill and the change to the word "part" in subsection (4) of s. 39.0132, F.S.,

(s. 39.814, F.S.) which is applicable solely to termination of parental rights proceedings is substantially similar but slightly narrower in scope as to the confidentiality and public records exemption. Both these confidentiality and public records exemption provisions were grandfathered in before the 1992 constitutional revision governing public records exemption. At some point, these two provisions may have to be reviewed and revised to clarify what the Legislature intended to be confidential and exempt from the public records law as to avoid any ambiguity or conflict. [See sections 3 and 5 of the CS]

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

appears to have been unintentionally omitted even though the amendatory clause in the bill (s.17) indicated that a change was occurring in that subsection. Senate Bill 2282 did contain the change but that version was not enacted into law. Since subsection (4) of s. 39.0132, F.S., relating to confidentiality and public records exemption for information and records arising out of chapter 39, F.S., was grandfathered in before the 1992 constitutional changes that revised the criteria for enacting public records exemption, it is questionable whether the replacement of the word "part" with the word "chapter" would have been perceived as a technical change or a substantive change.